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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/522,632	01/24/2005	Andrea Calvi	23175	7405
535 7590 07/18/2008 K.F. ROSS P.C. 5683 RIVERDALE AVENUE SUITE 203 BOX 900 BRONX, NY 10471-0900				
EXAMINER				
BENOIT, ESTHER				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/522,632

**Applicant(s)**

CALVI ET AL.

**Examiner**

ESTHER BENOIT

**Art Unit**

2142

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-31 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-31 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 24 January 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☒ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date 1/24/2005  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claims 1-31 are pending in this application.

### *Drawings*

2. Drawings 1-11 are objected to under 37 CFR 1.83(o) because they fail to include suitable descriptive legends because it is unclear as to how they correspond to their description in the specification. As to Figures 1-11, the examiner *suggests* that the applicants consider including a caption for each of the figure briefly describing the situation to which it is directed.
3. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or

"New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Claim Objections***

4. Claims 5 and 17-18 is objected to because of the following informalities:
- a. As to Claim 5, it is not clear if the applicant meant this claim is dependent from any of claims 2-4 or 2 and 4.
  - b. As to Claim 17, it is not clear if the applicant meant this claim is dependent from any of claims 13-16 or 13 and 16.
  - c. As to Claim 18, it is not clear if the applicant meant this claim is dependent from any of claims 13-17 or 13 and 17.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 101***

5. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 24-27 are rejected under 35 U.S.C. 101 because the claims are directed to non-statutory subject matter. The reason being is that only software can be stored on

a computer program product. Claims directed to software that are not embodied on a statutory computer readable media are not patentable. Accordingly, these claims are non-statutory.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Minde et al. (WO 00/33511) as applied in the International Search Report submitted by the applicant.

8. Claims 1-31 are rejected under 35 U.S.C. 102(b) as being anticipated by Friedrich et al. (5,958,009).

With respect to claim 1, Friedrich discloses providing an activation function (A) for carrying out sessions at the application level on said network (N), (Col. 2, lines 62-65) carrying out a session by means of said function (A), by measuring (F) and storing (H.sub.k), in a set of points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (N), data indicative of the behaviour of said network and verifying (B) an emergence of a critical situation in relation to said quality of service, (Col. 5, lines 11-18, *where*

*monitoring and storing information and data about the application's behavior is done)* generating a trigger signal (Trigger) when said critical situation emerges, (Col. 7, lines 11-14, *where a sensor detects an abnormal situation occurring*) and collecting (H), by effect of the generation of said trigger signal, said data indicative of the behaviour of the network measured and stored in said set of points of the network (N), the data thus collected being indicative of the quality of service of the network (N) itself (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*)

With respect to claim 2, Friedrich discloses measuring (F) and storing (H.sub.k) said data indicative of the behaviour of said network (N) is carried out in a plurality of different points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (Col. 5, lines 11-18)

With respect to claim 3, Friedrich discloses measuring (F) said data indicative of the behaviour of said network is carried out in synchronised fashion (Sync) in said different points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (Col. 5, lines 11-18)

With respect to claim 4, Friedrich discloses storing (H.sub.k) said data indicative of the behaviour of said network at the level of the corresponding point of said set, (Col. 5, lines 11-18) and collecting said data indicative of the behaviour of said network (N) at a centralised level (H) by effect of the generation of said trigger signal (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*)

With respect to claim 5, Friedrich discloses providing a centralised function (M) for managing the quality of service of the network, sending said trigger signal (Trigger) to said centralised function (M), and transmitting said trigger signal starting from said centralised function (M) to the points of said set (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) in order to proceed with the collection of said data indicative of the behaviour of said network (Abstract)

With respect to claim 6, Friedrich discloses associating to said activation function (A) a control function (B) sensitive to data that may be indicative of critical situations relating to the quality of service of the network, and subjecting said data that may be indicative of critical situations relating to the quality of service of the network to filtering (212) through said control function (B), said control function (B) being able to generate said trigger signal (214) by effect of said filtering function (212) (Abstract)

With respect to claim 7, Friedrich discloses activation function (A) and said control function (B) co-operate with each other according to a general agent/server configuration, in which said activation function (A) acts as an agent and said control function (B) acts as a server (Abstract)

With respect to claim 8, Friedrich discloses measurement of the quality of service of a telecommunication network comprising a plurality of interfaces (Gi, Gb), characterised in that said step of measuring in a set of points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (N) data indicative of the behaviour of the network (N) itself implies monitoring the data transiting on one of said interfaces (Gi, Gb) (Abstract)

With respect to claim 9, Friedrich discloses storing (H) data indicative of the behaviour of said network in a set of points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (N) entails storing data relating to a given time window (Col. 5, lines 11-18)

With respect to claim 10, Friedrich discloses providing at least a respective transmission channel (C, C.sub.t) to forward at least one signal between: said trigger signal to the points of said set (S.sub.1, . . . , S.sub.k, . . . , S.sub.n), and said data indicative of the behaviour of the network (N) measured (F) and stored (H) in the points of said set (Col. 5, lines 11-18)

With respect to claim 11, Friedrich discloses transmitting on said network being monitored (N) at least a signal between: said trigger signal to the points of said set (S.sub.1, . . . , S.sub.k, . . . , S.sub.n), and said data indicative of the behaviour of the network (N) measured (F) and stored (H) in the points of said set (Col. 5, lines 11-18)

With respect to claim 12, Friedrich discloses providing in the points of said set (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) a filtering function (T) to intercept said trigger signal transmitted on said network (N) being monitored (Abstract)

With respect to claim 13, Friedrich discloses at least one activating apparatus (A) for carrying out sessions at the application level on said network (N), (Col. 2, lines 62-65) at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) to measure (F) and store (H.sub.k) in a set of points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (N) data indicative of the behaviour of said network, at least one testing apparatus (B) to test for the occurrence of critical situations related to said quality of

service (Col. 5, lines 11-18, *where monitoring and storing information and data about the application's behavior is done*) and to generate, at the emergence of a said critical situation, a warning signal (Trigger), (Col. 7, lines 11-14, *where a sensor detects an abnormal situation occurring*) and a collecting apparatus (H) to collect, by effect of the generation of said trigger signal, said data indicative of the behaviour of the network measured and stored in said set of points of the network (N), the data thus collected being indicative of the quality of the network (N) itself (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*)

With respect to claim 14, Friedrich discloses a plurality of said monitoring apparatuses (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) to measure (F) and store (H.sub.k) in a plurality of different points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (N) said data indicative of the behaviour of the network (N) (Col. 5, lines 11-18)

With respect to claim 15, Friedrich discloses synchronisation modules (Sync) associated to said plurality of monitoring apparatuses (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) to measure (F) said data indicative of the behaviour of said network (N) in synchronised fashion on said different points (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) of said network (N) (Col. 5, lines 11-18)

With respect to claim 16, Friedrich discloses plurality of monitoring apparatuses (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) comprises: a memory (H.sub.k) for storing at the level of the corresponding point of said set (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) said data indicative of the behaviour of said network, (Col. 5, lines 11-18) and a transmission

module (M.sub.k) to transmit said data indicative of the behaviour of said network (N) to said collecting apparatus (H) by effect of the generation of said trigger signal (Col. 10, lines 19-23, *where behavioral information is stored for abnormal situations*)

With respect to claim 17, Friedrich discloses an apparatus for the central management (M) of the quality of service of the network configured to received said trigger signal (Trigger) from said at least one testing apparatus (B) and to broadcast said trigger signal to said at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) (Col. 5, lines 11-18)

With respect to claim 18, Friedrich discloses at least one activating apparatus (A) and said at least one testing apparatus (B) mutually co-operate according to a general agent/server configuration, in which said activating apparatus (A) acts as agent and said verification apparatus (B) acts as server (Abstract)

With respect to claim 19, Friedrich discloses measuring the quality of service of a telecommunication network comprising a plurality of interfaces (Gi, Gb), characterised in that said at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) is an apparatus for monitoring the data transiting on one of said interfaces (Gi, Gb) (Abstract)

With respect to claim 20, Friedrich discloses at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) comprises a memory (H.sub.k) dimensioned to store data indicative of the behaviour of said network (N) relating to a given time window (Abstract)

With respect to claim 21, Friedrich discloses at least one respective transmission channel (C, C.sub.t) to forward at least one signal between: said trigger signal to said at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, S.sub.n), and said data indicative of the behaviour of the network (N) measured (F) and stored (H) starting from said at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) (Abstract)

With respect to claim 22, Friedrich discloses System configured to transmit on said network (N) being monitored at least one signal between: said trigger signal to at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n), and said data indicative of the behaviour of the network (N) measured (F) and stored (H) starting from said at least one monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) (Col. 5, lines 11-18)

With respect to claim 23, Friedrich discloses monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) comprises an additional filtering module (T) to intercept said trigger signal transmitted on said network being monitored (N) (Abstract)

With respect to claim 24, Friedrich discloses computer program product able to be directly loaded into the memory of a digital computer and comprising portions of software code able to perform said function of carrying out session at the application level on said network (N) (Abstract)

With respect to claim 25, Friedrich discloses measuring (F) and storing (H) said data indicative of the behaviour of the network (N) (Abstract)

With respect to claim 26, Friedrich discloses verifying (B) the possible occurrence of a critical situation relating to said quality of service and the step of generating a trigger signal (Trigger) upon the occurrence of said critical situation (Col. 7, lines 11-14)

With respect to claim 27, Friedrich discloses sending said trigger signal (Trigger) to the points of said set, and collecting, by effect of the generation of said trigger signal, said data indicative of the behaviour of said network measured and stored in said set of points (Col. 7, lines 11-14)

With respect to claim 28, Friedrich discloses apparatus configured for use as said testing apparatus (A) in a system as claimed (Abstract)

With respect to claim 29, Friedrich discloses apparatus configured for use as said monitoring apparatus (S.sub.1, . . . , S.sub.k, . . . , S.sub.n) in a system as claimed (Abstract)

With respect to claim 30, Friedrich discloses apparatus configured for use as said collecting apparatus (H), within a system as claimed (Abstract)

With respect to claim 31, Friedrich discloses apparatus configured for use as said apparatus for the centralised management (M) of the quality of service of the network within a system as claimed (Abstract)

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Esther Benoit whose telephone number is 571-270-3807. The examiner can normally be reached on Monday through Friday between 7:30 a.m and 5 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Caldwell can be reached on 571-272-3868. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

E.B.  
June 19, 2008

/Andrew Caldwell/  
Supervisory Patent Examiner, Art Unit 2142

